

THE ROOTS OF NEW JERSEY JUDICIAL INDEPENDENCE

*Robert F. Williams**

Battleground New Jersey: Vanderbilt, Hague, and Their Fight for Justice.
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Judge Nelson Johnson's new book has come at a particularly important time in New Jersey political and judicial history. In light of the attack on New Jersey's hard-earned independent judiciary initiated by Governor Christie's decision not to renominate Justice John Wallace for the Supreme Court,¹ it is particularly important for all of us to look back to see the origins of our modern judiciary. Many of us are now aware that the difficult, often thankless and unsuccessful, work of generations to achieve a system of judicial independence can be lost almost overnight. Those of us who grew complacent about our highly-respected judicial system from the 1947 constitutional reform until 2010 have had a rude awakening. This book reminds us of what is at risk.

*Battleground New Jersey: Vanderbilt, Hague, and Their Fight for Justice*² is must reading for all those interested in New Jersey politics, the development of our governmental institutions, and particularly the achievement of judicial independence. Johnson, well known for his influential, fictional *Boardwalk Empire: The Birth, High Times, and Corruption of Atlantic City*,³ has performed prodigious research,

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1. Robert F. Williams, Op-Ed., *N.J. Judicial Independence May Have Died on May 3, 2010*, N.J. NEWSROOM (May 25, 2010), <http://www.newjerseynewsroom.com/commentary/nj-judicial-independence-may-have-died-on-may-3-2010>.

2. NELSON JOHNSON, *BATTLGROUNND NEW JERSEY: VANDERBILT, HAGUE, AND THEIR FIGHT FOR JUSTICE* (2014).

3. NELSON JOHNSON, *BOARDWALK EMPIRE: THE BIRTH, HIGH TIMES, AND CORRUPTION OF ATLANTIC CITY* (2002).

including the discovery of new materials regarding Arthur Vanderbilt and his nemesis Frank Hague, for this new nonfiction work. As revealed in the title, he tells the story through the competing points of view of Newark, Vanderbilt, Republicans, and WASPs as they compete for political superiority and control of New Jersey politics and courts with Jersey City, Frank Hague, Democrats, and Catholics.

Beginning with the birth and early upbringing of these two major political rivals, Johnson recounts their very different visions of politics and government and the many battles they fought, often through proxies and hand-picked political candidates. A recurring theme is the tolerance of political corruption under the noses of dependent, politically-controlled judges.

Most judges, lawyers, and even many New Jersey citizens have heard the story of the terrible New Jersey judiciary prior to the major reforms accomplished by the 1947 New Jersey Constitution. Most of us, however, are not able to provide concrete examples of how the patchwork of courts, often with overlapping jurisdiction and barriers between law and equity, actually operated. Johnson does us all a service by recounting in Chapter One the saga of Sadie Urback as she dealt with New Jersey's Dickensian judiciary in her quest to recover life insurance for her husband's death in the late 1930s. This true story provides a very clear picture for all of us of the often insurmountable complexities and dysfunction of New Jersey's pre-1947 judiciary. By contrast to frustrated citizens who often did not receive justice at all, the judges, lawyers, and politicians who had vested interests in maintaining this obscure system resisted all efforts at reform. Johnson's assessment was that "the courts didn't exist for the general public," but instead were there to "protect the powerful from change and to serve the people who made their incomes from the system."⁴

Johnson described the system as follows:

Delays, confusion, and uncertainty brought about by two separate court systems, overlapping jurisdictions, ancient rules, and puppet judges created a Dickensian aura of absurdity that sent litigants from the state's courthouses dreading the thought of returning. The hodgepodge of courts, which had evolved over the centuries at the whim of politicians, was at best hit or miss when it came to ensuring the rule of law.⁵

4. JOHNSON, *supra* note 2, at 6.

5. *Id.* at 5-6.

Readers will recognize some of the real-life characters from *Boardwalk Empire* fighting for political dominance. We are reminded of the glory days of Newark, in contrast to the hardscrabble, working-class Jersey City, only seven miles away.

Johnson tells the story in an accessible style, sometimes even colloquial, through the eyes of the two political opponents, who, notably, never actually met in person:

Notwithstanding the enormous gap in their education, heritage, and style, they shared common traits. Neither had casual moments with anyone but trusted allies; neither had time for opinions that didn't suit their agenda; neither drank alcohol or had dalliances with women. Both exuded an intensity that either attracted people or repelled them; both craved power to bend the world to their vision; and both were ruthless—Vanderbilt when he had to be and Hague because he knew no other way.⁶

Vanderbilt has enjoyed a heroic, almost mythic, status in New Jersey judicial history since, after decades of effort, he (with the help of a few others) successfully orchestrated New Jersey's judicial reforms in the 1947 constitution.⁷ Johnson, despite reflecting great respect for Vanderbilt's persistence and accomplishments, recounts in Chapter Eight an apparently heretofore unknown episode in his life. Using "Box 96" of Vanderbilt's papers in the Olin Library of Wesleyan University, Johnson found evidence of Vanderbilt's deep collaboration with Professor Dayton David McKean and his publisher on the development of McKean's 1940 book, *The Boss: The Hague Machine in Action*.⁸ This book painted an extremely negative picture of Frank Hague, and, according to the newly-discovered documents, was written under the close supervision of Vanderbilt and disseminated nationally at Vanderbilt's behest. Johnson concluded:

Putting it kindly, Box 96 confirms that the president of the American Bar Association—so committed to truth and justice—was not above cherry-picking the public record in libeling Frank Hague. He was very selective in weaving a story that was mostly accurate yet decidedly misleading. Vanderbilt also personally drafted multiple revisions of McKean's book—far greater than

6. *Id.* at 5.

7. *See, e.g.*, ARTHUR T. VANDERBILT II, *ORDER IN THE COURTS: A BIOGRAPHY OF ARTHUR T. VANDERBILT* (1997).

8. DAYTON DAVID MCKEAN, *THE BOSS: THE HAGUE MACHINE IN ACTION* (1940).

mere editing, akin to being a coauthor—which made their way into the final manuscript, all contrived to appear like serious history, with portions deliberately distorting the truth of several important events in Hague’s career.⁹

Johnson’s book paints a much wider picture than just the development of judicial independence. He includes detailed information on the lives, personalities, and careers of Vanderbilt and Frank Hague, as well as many other important political figures of the era. He covers many of the important elections and developments of the first half of the twentieth century in New Jersey. The final chapters of the book cover the better-known events leading up to and culminating with the judicial reform provisions of the 1947 New Jersey Constitution. This coverage is very readable and people in New Jersey would do well to review it. However, possibly the most important contribution this book makes is to remind us where our judiciary came from, how difficult the path to reform was, and how easily those achievements can be lost. In the words of Joni Mitchell, “you don’t know what you’ve got ’til it’s gone.”

9. JOHNSON, *supra* note 2, at 114–15.